

LEGISLATIVE UPDATE

COVERING CRIMINAL JUSTICE LEGISLATIVE ISSUES

NOVEMBER 2002, No. 15

DEPARTMENT OF PUBLIC ADVOCACY

Significant Caseload Increase, Budget Reduction Threaten Indigent Defense

Public defender caseloads rose 7% at the trial level in FY02. This occurred on top of a 3% increase in caseload at the trial level during FY01. When combined with the 3% reduction in DPA's budget in FY02 and FY03, it is clear that a crisis of caseloads is beginning. These caseload increases, despite a still-declining crime rate, threaten to overwhelm trial offices where caseloads are already at well over recommended national standards.

Blue Ribbon Group was Concerned About High Caseloads

The *Blue Ribbon Group*, a group of 22 influential Kentucky citizens chaired by former Chief Justice Robert F. Stephens and former House Judiciary Chair Mike Bowling, issued a report on Kentucky's indigent defense system on June 1, 1999. In that report, they expressed concern about Kentucky public defenders carrying excessive caseloads.

Finding #5 stated that "the Department of Public Advocacy per attorney caseload far exceeds national standards." As a result, the *Blue Ribbon Group* recommended in Recommendation #6 that "full-time trial staff should be increased to bring caseloads per attorney closer to the national standards. The figure should be no more than 350 in rural areas and 450 in urban areas."

To alleviate these concerns, the *Blue Ribbon Group* recommended the hiring of 35 additional attorneys to reduce excessive caseloads.

There are National Caseload Standards

A national consensus regarding appropriate caseload levels for public defenders has been reached. National standards reported in the National Advisory Commission, published in 1973, have "proven resilient over time, and provide a rough measure of caseloads." *ABA Standards for Criminal Justice Providing Defense Services*, Third Edition, p. 72.

Standard 13.12 of the National Advisory Commission states that the caseload of a full-time defender should not exceed more than 150 felonies, or 200 juvenile cases, or 400 misdemeanor cases. These do not factor in time-consuming capital cases.

Translated into Kentucky circumstances, where DPA's caseload is approximately 21% in Circuit Court and 79% in district court, a DPA attorney should handle no more than 310 cases consisting of a mixture of misdemeanor, juvenile, and felony cases. Yet, in FY02, the average DPA lawyer handled 435 new open cases, far in excess of national standards.

2000 General Assembly Funds 10 Caseload Reduction Attorneys

The Department of Public Advocacy requested funding for 35 caseload reduction attorneys in its 2000 budget request in response to the *Blue Ribbon Group* report. This was part of the \$11.7 million that the *Blue Ribbon Group* recommended DPA receive in additional General Fund monies in order to rise from the bottom to the middle of the states in support for indigent defense.

The 2000 General Assembly was able to fund DPA only for 10 caseload reduction lawyers. Rather than \$11.7 million, the 2000 General Assembly funded DPA at \$4 million for FY01, and \$6 million for FY02 in additional General Fund dollars. The 10 caseload reduction lawyers were funded to begin in April of 2002, with the full funding for those lawyers to be placed in the 2002 budget.

Modest Caseload Reduction Stymied by Budget Reductions

Even the modest caseload reduction funded by the General Assembly in the 2000 budget was not realized. In FY01, declining revenues caused the DPA's budget to be reduced by approximately \$490,000.

In FY02, DPA's \$28+ million dollar budget was reduced by
Continued on page 2

INSIDE

.. DPA's Budget Shrinks, Caseloads Increase	3
.. DPA's KIP: Man Released from Prison	5
.. Law School Loan Assistance Sought	6
.. Juvenile Death Penalty: Kentuckians' Opinions	7
.. New Location for DPA's Murray Office	8

Continued from page 1

\$750,000. As a result, DPA was able to hire only 5 of the 10 caseload reduction lawyers. Thus, what was originally a 35-attorney addition to reduce caseloads has turned into only 5 attorneys who were placed in the highest caseload offices across the state.

The budget reduction also caused the delay in the opening of an office in Bullitt County until January of 2003, and a cut in the size of that office from 4 attorneys to 2 attorneys. Nelson County, which was to have been covered by the Bullitt Office, remains in the Elizabethtown Office coverage area, exacerbating that office's caseload problems. Further, the Murray Office, which had been funded for 9 attorneys, was cut to 6 attorneys, further causing problems in the entire Western Region.

Caseloads Rise Another 7% in FY02

Earlier in the year, I wrote that caseloads were going up at a 5.9% level after 9 months. By the time the year ended, even that figure was low. As of year-end, DPA's caseload had gone up 7% at the trial level. DPA handled over 108,000 cases in FY02 at \$252 funding level per case. In FY00, DPA handled 95,000 cases at the trial level, demonstrating a dramatic 2-year increase of over 10,000 cases at the trial level. 21% were circuit court cases. Juvenile cases rose by 1.8%. The average caseload per full-time trial lawyer increased from 421 to 436, up 3.5%. Jefferson County experienced an increase from 22,324 in FY01 to 23,763 in FY02. Fayette County also increased from 6709 in FY01 to 6946 in FY02.

The DPA Critical Office List

Most disturbing about the FY02 caseload figures is that 7 offices are on the critical list and 3 other offices on the cusp of being critical. These offices are as follows:

- ◆ Elizabethtown Office. This is one of DPA's biggest Offices. In FY00 they were at 537 new cases per lawyer. In FY01 they were at 606. This year they were at 564. Because Nelson County is still being covered by this office due to the budget reduction (they were to have gone to the Bullitt Office), the caseload remains the highest in DPA.
- ◆ Hopkinsville Office. At 560 new cases per lawyer, this office's caseload is up 18% from FY01. Further, it is the home of a regional manager, whose caseload should be reduced in order to enable him/her to manage a trial region.
- ◆ Frankfort Trial Office. This office's caseload went up 15% in FY02, to 560 cases per lawyer.
- ◆ Paducah Office. This office has had a chronically high caseload. It was 603 in FY01. In FY02, it was 543.
- ◆ Bell County Office. This office's caseload went up 23% to 555 per lawyer.
- ◆ Morehead Office. This office, which features some of the greatest travel of any of our trial offices, is up 10% to 507 per lawyer.
- ◆ Columbia Office. This office, which also features immense travel for our attorneys, from Monroe in the South to Wash-

ington in the North, had 499 cases per lawyer in FY02, up 6%.

Three other offices are on the "of great concern" list. They are:

- ◆ LaGrange Office. This office is at 489, and houses a regional manager. Their FY02 caseload was up 17%.
- ◆ Madisonville Office. This office is at 485.
- ◆ London Office. This office is at 481, and also houses a regional manager.

FY03-04 Budget Will Not Relieve the Caseload Crisis

DPA sought in its 2002 budget request to complete the *Blue Ribbon Group* recommendations. This completion would have cost an additional \$5.7 million in General Fund dollars. It would have included sufficient monies to reduce significantly excessive caseloads for Kentucky's trial level public defenders.

However, the now familiar budget shortfall has short-circuited DPA's attempt to alleviate the caseload crisis. The Governor's Spending Plan now in effect does not include any money for caseload reduction attorneys. 26 existing positions are unfunded. The increase in caseloads in FY01 and FY02 has not resulted in an increase in staffing (other than 1 attorney in Somerset to cover a new judicial position). Any additional caseload rise during FY03 will not be met with an increase in staff unless authorization is given to address this caseload crisis.

The 2004 General Assembly Must Address Excessive Defender Caseloads

In 2002, the American Bar Association House of Delegates passed the *Ten Principles of a Public Defender Delivery System*. One of the 10 fundamental principles is the following:

"5. Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.¹ National caseload standards should in no event be exceeded..."

The caseload crisis for Kentucky public defenders is real. DPA will continue to monitor its caseload. DPA will have to come before the 2004 General Assembly and make its case for a significant increase in monies to lower these excessive caseloads. Even the best of trial attorneys cannot provide effective assistance when her caseload is excessively high. Kentucky depends upon its public defenders to ensure the reliability of verdicts at the trial level. Kentucky's judiciary counts upon public defenders to move their dockets and ensure that due process is being provided. Excessive trial level caseloads threaten both the reliability of verdicts and the ability of Kentucky public defenders to serve the judiciary and the public. ■

Ernie Lewis, Public Advocate

DPA'S Budget Shrinks While Caseload Increases

The problems DPA is now experiencing with burgeoning caseloads are described in the proceeding cover article. The budgetary context for this increase in caseload is important in order to understand the challenges presently faced by DPA in delivering indigent defense services in Kentucky. Simply put, DPA's budget is not keeping up with the caseload.

In FY02, DPA was funded at \$27,992,100. This funding level reflected a 3% budget reduction that occurred during the fiscal year.

The Governor's Spending Plan for FY03 increases DPA's budget only slightly to \$28,219,300. Further, this budget provides no funding for 26 of DPA's positions. The budget does reflect a 2.7% increase for salaries for state employees, but not for Louisville, Lexington, or Boyd County, or any of the 9 remaining contract counties. It also reflects \$60,000 additional General Fund dollars for one new position to be placed in the Somerset Trial Office in order to cover the creation of a new judgeship.

DPA's Share of Criminal Justice Budget Decreases

The FY03 Spending Plan reverses a more recent trend that had brought DPA's budget expenditures from \$22.8 million in FY00 to \$27.4 million in FY02 (the expenditures are different from the \$27.9 funding level identified above).

At the time of the *Blue Ribbon Group*, DPA's funding level placed it near the bottom of the nation for indigent defense spending. Finding #4 of the *Blue Ribbon Group* was that DPA "ranks at, or near, the bottom of public defender agencies nationwide in indigent defense cost-per-capita and cost-per-case." This resulted in Recommendation #2, which reads: "The Kentucky Public Defender System cannot play its necessary role for courts, clients, and the public in this criminal justice system without a significant increase in funding." Recommendation #12 reads: "The \$11.7 million additional funding for each of the 2 years is reasonable and necessary to meet DPA's documented funding needs..." Thereafter, DPA received only \$4 million additional General Fund dollars in FY01, and \$6 million in FY02. \$5.7 million remained to fund the vision of the *Blue Ribbon Group*.

Following the *Blue Ribbon Group*, DPA's spending level increased significantly. From FY 00 to FY 02, expenditures for Kentucky defenders increased from \$22.8 million to \$27.4 million.

However, the 2002 budget and revenue situation altered the trend. Despite the need for \$5.7 in additional General Fund appropriation, DPA received a virtually flat-lined budget at a time when caseloads were increasing.

DPA's Share of Criminal Justice Expenditures Decrease

An important way to examine DPA's situation is to compare it to other criminal justice agencies. Between FY00 and FY02, defenders' percentage of the funds expended by Kentucky Criminal Justice agencies increased from 2.81% to 3.05%. This reflected the progress brought about by the *Blue Ribbon Group* and the Governor's and General Assembly's response to it.

However, the Governor's Spending Plan for FY03, consistent with the budget passed by both houses of the 2002 General Assembly, reversed the trend. DPA's planned spending for FY 03 shows a decrease from 3.05% to only 3.01% of criminal justice funds. (See Pie Chart below)

Prosecutor's Budget Increases

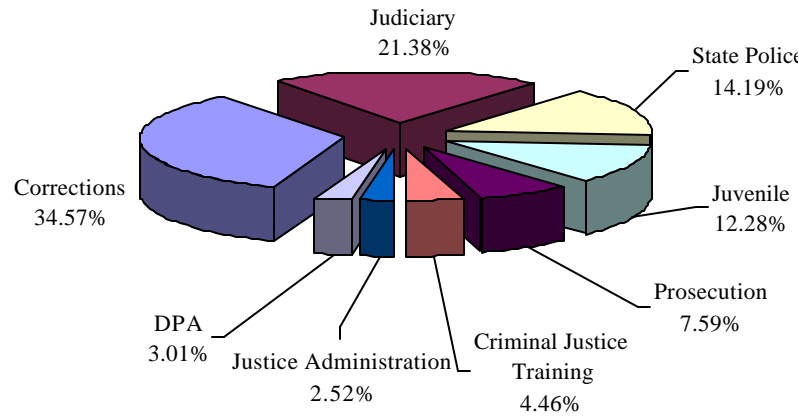
Another way to examine this situation is to compare DPA's budget to the most directly comparable component of the criminal justice system. The *Blue Ribbon Group* Finding #7 reads: "The ratio of funding between prosecution and public defense in Kentucky is approximately three to one, which is higher than in many other comparable states. It is important to point out that in this report that the *Blue Ribbon Group* is not stating that prosecution in Kentucky is overfunded; in fact, just the opposite may be true. What we are saying is that public defense should be adequately funded and if comparisons are to be made with other criminal justice agencies, that all expenditures from all sources be included. This disparity exists despite the fact that public defenders represent 84% (now 90%) of the cases prosecutors represent in circuit court)."

Three years after the *Blue Ribbon Group Report*, prosecutors fared much better than defenders in the 2002 General Assembly. From FY 00 to FY 02, expenditures by Kentucky prosecutors increased nearly \$5 million from \$56.9 million to \$61.8 million. During this period, the prosecutors' percentage of the funds expended by criminal justice agencies decreased from 7.03% to 6.88%. For FY 03, however, this trend reversed sharply. The planned spending increases for prosecutors lifts their spending to over \$71.1 million, for 7.59% of the criminal justice funds.

In the spring of 2001, the *Kentucky Survey* polled 841 Kentuckians and found substantial support for equal resources for prosecutors and defenders. 78.9% believed that Kentucky prosecutors and public defenders should have balanced resources for prosecuting and defending cases. 75% believed that when defenders had fewer resources than prosecutors unfair outcomes such as innocent people being convicted would result.

Continued on page 4

Other Criminal Justice Agencies



For Fiscal Year 2003, the Commonwealth of Kentucky is slated to spend over \$937 million on criminal justice, which is 5.15% of the spending planned for the Commonwealth. In FY 2002, criminal justice expenditures totaled almost \$899 million. Criminal justice expenditures in FY 01 totaled nearly \$846 million and in FY 00 totaled nearly \$810 million. Spending planned for all of state government in FY 03 is over 18.211 billion dollars. FY 03 criminal justice spending of \$937,235,600 is divided as follows:

Corrections	\$324,022,600	34.57%
Judiciary	\$200,368,100	21.38%
State Police	\$133,018,300	14.19%
Juvenile	\$115,105,100	12.28%
Prosecution	\$71,152,500	7.59%
Criminal Justice Training	\$41,777,100	4.46%
DPA	\$28,219,300	3.01%
Justice Administration	\$23,572,600	2.52%
Total	\$937,235,600	100%

DPA Expenditures in Context

The Department of Public Advocacy's expenditure increase of \$4.6 million from FY 00 to FY 02 provided defender clients and the criminal justice system with a statewide public defender system significantly more capable of doing its part to provide a fair process and reliable results. While defenders have received much needed added resources, FY 03 spending authorizations show a slight reduction for DPA's percentage of criminal justice resources while other areas of criminal justice (specifically prosecutors, criminal justice training, and justice administration) receive an increased percentage. Prosecutors receive over \$.07 and defenders receive \$.03 of every dollar spent for Kentucky criminal justice programs. There is still unfinished business to insure fairness and reliability for the future within a level playing field of resources. Looking at defender expenditures and prosecutor expenditures in the context of expenditures for the criminal justice system provides perspective on remaining defender needs.

If the more recent downward trend is not addressed, it may be time to look again at the *Blue Ribbon Group* conclusion. That report indicated that if the *Blue Ribbon Group* funding

levels were not met, there were risks that several things could occur, among the named risks being the following:

- .. "Full-time public defender caseloads will increase to the breaking point..."
- .. "DPA will not be able to provide representation to all indigent defendants in the state and will have to develop policies regarding courts that they cannot serve."
- .. Cases will have to be retried because of the inadequacy of counsel or the lack of counsel completely."
- .. The community will be frustrated, as well as all other criminal justice agencies because public defenders cannot perform their required tasks adequately."

Data Sources: As of this writing (09/26/02), the Commonwealth of Kentucky has no official budget with resulting appropriations for Fiscal Year 2003 (July 1, 2002 - June 30, 2003). Therefore, the most current criminal justice figures listed for FY 03 are those in the governor's spending plan (as opposed to actual appropriations), and can most accurately be compared to prior year expenditures (rather than appropriations). FY 03 spending figures were derived from the "Explanation of Governor Patton's 2003 Spending Plan," available on the Office of State Budget Director's web site at www.osbd.state.ky.us, and were confirmed as the most recent statistics by OSBD personnel on September 26, 2002. All Executive Branch numbers are from that document's "Attachment A: Governor's Spending Plan Fiscal Year 2003 Spending Targets," and all Legislative and Judicial Branch numbers are from "Attachment B: Comparison of House Bill 1 and House Bill 1 Senate Committee Substitute."

Criminal justice entity expenditures for Fiscal Year 2000 and Fiscal Year 2001 were derived from the "Commonwealth of Kentucky Comprehensive Annual Financial Report" for each respective fiscal year. Expenditure data for each entity in Fiscal Year 2002 was received from the Governor's Office for Policy Management on September 26, 2002, as the comprehensive report for FY 02 had not yet been published by that date. ■

Ernie Lewis
Public Advocate

and **Bryce Amburgey**
Criminal Justice Analyst

DPA KY Innocence Project Secures Release of Man from Prison

Herman May. In the early morning hours of May 22, 1988, Herman May's life changed forever. A young woman, a student at the University of Kentucky, was raped and sodomized in the back yard of a friend's house in Frankfort at approximately 3:00 a.m. Just over a month later, while on vacation in California, the young victim picked the picture of Herman May from a photo lineup and identified him as her attacker. May was convicted in October of 1989 of rape and sodomy and sentenced to concurrent 20 year sentences.

May was one of the first prisoners to contact the Department of Public Advocacy's *Kentucky Innocence Project* (KIP) and request its help. A review of the questionnaire he submitted about specifics of his case raised a lot of red flags and his case was assigned to a University of Kentucky law student for investigation. Almost immediately the red flags became glaring problems.

May's case involves some of the most common errors found in the wrongful conviction of innocent people. There was the identification issue. The initial description of the attacker was that he was thin, in his 20's, had long, stringy greasy dark brown hair and was wearing a blue cap. Two police officers testified about the description given within minutes of the attack. The investigating officer testified that the victim gave the same physical description at the hospital except noted that the attacker's hair was "chocolate brown." Herman May was 17 years old in May, 1988 and had bright red hair.

Once May was identified as a suspect, the investigating detective flew to California and showed the victim a photo lineup that included May's picture. The victim first picked out three pictures and began a process of elimination that led to her identifying May as her attacker.

At trial there was also testimony about similarities between hair found on the victim and Herman May's hair. The forensic specialist testified that "...it was as good of a match as I have ever had."

DPA. KIP's team of Marguerite Thomas, Gordon Rahn, Diana Queen, Chase College of Law Students Beth Albright and Debbie Davis and UK law student Chris Turner, however, continued to pursue the red flags. Based upon the victim's testimony at trial that she had not had consensual sex for several weeks prior to the rape, KIP requested the release of slides from the rape kit for DNA testing. The court granted the motion and DNA tests excluded Herman May as the donor of the semen.

What should have led to the release of Herman May from prison led to a new revelation from the victim—she had consensual sex within a "couple of days" of the rape. As a result, the court ordered an additional battery of tests on other physical evidence and all of those test results were inconclusive. Still nothing matched Herman May.

On July 31st, the court ordered additional testing. The hairs entered into evidence at trial were sent to a laboratory for mitochondrial DNA testing and on September 18, 2002, Herman May's life changed again. Franklin Circuit Court Judge Roger L.

Crittenden received the lab report on the 18th and, after discussing the results with the lab technicians, entered an order that found that "...the results of the tests are of such decisive value or force...that it would probably change the result if a new trial should be granted."

Judge Crittenden's order required the immediate release of Herman May from prison. The order was entered at approximately 2:00 p.m. CDT and at around 3:30 p.m. on September 18th, Herman May walked out of the Kentucky State Penitentiary and waited for his parents to take him home.

Following May's release from prison, Public Advocate Ernie Lewis said: "This is the tip of the iceberg indicating fundamental problems with the criminal justice system. National estimates put the number of innocent people incarcerated in the nation's prisons between 4%-10%. Our system must ensure that guilty people and only guilty people are punished. It is not adequately doing that. William Gregory in Louisville, the 17 year old Larry Osborne in Whitley County and now the 17 year old Herman May in Frankfort prove what we feared—we have serious problems across Kentucky with mistaken eyewitness identification, cross-racial identification, bad forensic evidence, overzealous prosecution – and innocent citizens are being wrongly convicted. We must ensure that before liberty is taken from a fellow citizen that someone is guilty. There are serious problems with our justice system in Kentucky that can only be solved with adequate resources for our public defender system. Kentucky has made great strides in the last 6 years, but heavy caseloads for public defenders threaten a return to the time when we cannot guarantee to the public the reliability of the verdicts in cases in which public defenders are involved. The Department of Public Advocacy's *Kentucky Innocence Project* with DPA, the University of Kentucky Law School and Chase College of Law working in partnership is revealing the iceberg."

Herman May today is adjusting to his new life and catching up on 13 years he missed with his family. ■



Herman May and his Parents

Gordon Rahn, Internal Policy Analyst

Law School Loan Assistance Sought for Kentucky Prosecutors and Defenders

A loan assistance bill for prosecutors and public advocates is expected to be introduced in the 2003 General Assembly. Law school loan forgiveness remains an unmet need for both Kentucky defenders and prosecutors. Kentucky prosecutors and public advocates have large student loans. The average student law school loan balance indicated in a Fall 2001 Legislative Research Commission (LRC) Survey for Kentucky prosecutors and public advocates was substantial, \$42,037. The range of balances was from \$1,000 to \$139,000. Of the 284 surveyed, 184 had a loan balance remaining.

Recruiting and Retaining Quality Defenders and Prosecutors Is Difficult. The combination of low salaries and high student loans has made recruiting entry-level attorneys difficult. Salaries are on the rise for prosecutors and defenders but student law school loans are an area that remains a disincentive for many who want to be a prosecutor or defender from taking a position. Retaining experienced attorneys has also been a problem for prosecutors and defenders.

Student Loan Forgiveness for Prosecutors and Defenders Recommended. In light of these problems, the Kentucky *Blue Ribbon Group on Improving Indigent Defense in the 21st Century* (BRG) made the following Recommendation: "Recommendation No. 5: Loan Forgiveness Programs Should Be Made Available to Prosecutors and Defenders. "The BRG's members included the Chief Justice, former Chief Justice, a prosecutor, legislators, the KBA President and Past-President and many prominent professional.

Loan Forgiveness Program will Improve Criminal Justice System. The Commonwealth Attorney Association and the Prosecutor's Advisory Council have endorsed a loan assistance bill.

Jefferson County Commonwealth Attorney Dave Stengel talked about the need for a loan assistance program to facilitate recruiting and his commitment to seeking its establishment, "I am confident that our legislative sponsors during the 2003 session will give such a bill top priority. I have advised my staff that I will continue this fight for student law school loan assistance plan and that I will make it top priority during the 2003 session. I believe that a student loan assistance is essential for us to attract and keep top quality young prosecutors, just as I am sure that DPA needs such legislation to keep effective young defenders."

Public Advocate Ernie Lewis is very interested in a loan assistance program because of its affect on the way the people's business is done in Kentucky courtrooms day in and day out, "Public service is one of the lawyer's highest callings. We do the public's business both prosecuting and defending. While no one goes into public service expecting to become wealthy, we must enable young law students to engage in public service without a financial sacrifice. It is essential that we attract high quality lawyers to perform this noble function. Our ability to do

that is threatened by the high price of law school accompanied by enormous student loans carried by graduating law students. It is essential that Kentucky address this problem soon."

What the Bill Does. The proposed bill establishes a program supervised by the Kentucky Higher Education Assistance Authority. It provides reimbursement to full or part-time prosecutors (attorney generals, commonwealth attorneys, county attorneys) and public advocates for payment of student law school loan expenses. It requires commitment of two-year increments of employment that can be renewed. For full-time attorneys, reimbursement is up to \$6000 per year. For part-time attorneys, reimbursement is up to \$3000 per year. An attorney who voluntarily leaves employment during the two-year commitment must return all payments received during that two-year period. The effective date of this proposed Act is July 15, 2004. This proposed bill has no funding provision. It leaves that decision for the 2004 General Assembly.

Public Policy Reasons for the Act. There are considerable public policy reasons for this Act:

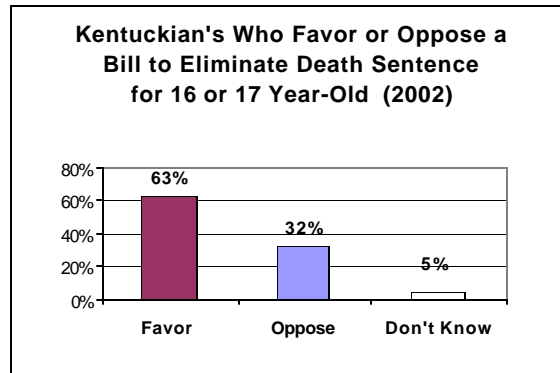
- **Attract Better Lawyers.** Assisting new law school graduates with their large law school loan payments will be one tool to recruit a higher quality attorney to the important public service as a prosecutor or defender.
- **Keep Better Lawyers.** Law school loan assistance will allow prosecutor and defender offices to retain higher quality attorneys in public service longer. Turnover of experienced attorneys who have been trained at public expense will be reduced. Taxpayer money will be more effectively used, as new attorneys will not have to be trained as frequently.
- **Serve Public Better.** Having better lawyers hired and retained will allow the public's important business in the criminal justice system to be done at a higher level of competence and more efficiently, thus creating more confidence in the process and the results.
- **Increase Minority Employment.** Student law school loan assistance is likely to make it possible for more minorities to choose public service.
- **Foster Public Interest Work.** The American Bar Association has a policy that "encourages law schools, state and local bar associations, and federal and state lawmakers to establish Loan Assistance Repayment, Loan Forgiveness, and Income Sharing Programs for law school graduates accepting low-paying, legal, public interest employment."

Loan forgiveness for prosecutors and defenders remains an unmet need in Kentucky. The creation of a program to assist public servants doing public defender and prosecutor work will attract and retain the best and the brightest in our criminal justice system and provide for justice that is efficient and effective for the people of Kentucky. ■

Ed Monahan, Deputy Public Advocate

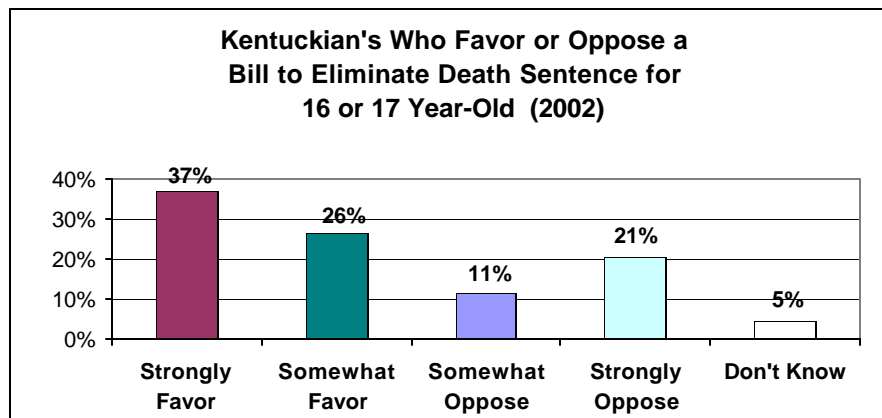
Do Kentuckians Favor or Oppose a Bill in 2003 to Eliminate the Death Penalty for 16 and 17 Year Olds?

The UK Survey Research Center has just completed a new statewide poll asking whether a bill to eliminate the death penalty for 16 and 17 year olds in the 2003 General Assembly was favored or opposed. The results are clear. Kentuckians support a bill to eliminate the death penalty for 16 and 17 year olds by a 2 to 1 margin. A significant majority of Kentuckians favor a bill in the 2003 General Assembly that would eliminate the death as a sentencing option for 16 and 17 year olds. In the recent Kentucky Survey, 63% of the respondents said they favored such a bill. 32% said they opposed such a bill. 5% said they had no opinion/did not know. While 21% strongly opposed such a bill almost twice as many Kentuckians, 37%, strongly favor it.



The Summer 2002 Kentucky Survey conducted by the U K Survey Research Center surveyed 882 Kentuckians 18 years of age or older from July 20 to August 26, 2002 and included the following question:

Currently in Kentucky, if a 16 or 17 year-old is convicted of aggravated murder, they can be given one of the following sentences: The death penalty, life in prison without the possibility of parole, life in prison without the possibility of parole for 25 years, life in prison without the possibility of parole for 20 years, or 20 to 50 years in prison without the possibility of parole until at least 85% of the sentence is served. A bill to eliminate the death penalty option for 16 and 17 year olds will be introduced in the next General Assembly. This bill would keep all of the other sentencing options but NOT allow a 16 or 17 year-old to be sentenced to death. Would you favor or oppose this bill? (Is that strongly or somewhat favor/oppose?)



National Opinion in 2002. This is in line with nationwide opinion. Nationally, support is low for the death penalty for juveniles. The Gallup Poll conducted from May 6-9, 2002 with 1,012 adults nationwide and a margin of error of ± 3 found that only 26% favored the death penalty for juveniles, 69% opposed the death penalty for juveniles and 5% had no opinion.

Current Kentucky Law. Kentucky law now allows the death penalty for children 16 to 18 years of age who are convicted of a capital crime. KRS 640.040. Kentucky now holds juveniles who commit serious crimes accountable in significant ways. The 1998 General Assembly created a provision of 85% parole eligibility for a term of years for violent offenders. A sentence of 70 years now has a parole eligibility of 59.5 years. A juvenile is also subject to life without the possibility of parole for 25 years for capital offenses. ■

New Location on MSU Campus for DPA's Murray Office

On August 22, 2002, the DPA's Murray Office, housed on the campus of Murray State University, celebrated its recent move to a new and bigger location. The office is now located at 503 North 16th Street, Murray, KY 42071. This office is not only providing quality representation to indigents in Graves, Calloway and Marshall Counties, but also works with the University in providing an internship to students interested in criminal law. At present, the DPA Murray Office has three Murray State University interns working at its office and providing valuable assistance to the staff.

Officials present for the open house included Rep. J. R. Gray, Rep. Buddy Buckingham, Murray State University President King Alexander, Murray State University Vice President Jim Carter, Public Advocate Ernie Lewis, Trial Division Director David Mejia,

Western Regional Manager Tom Glover, Dr. Middie Sutherland, MSU professors and staff, and a host of local dignitaries and DPA staff. After a brief ceremony, those present went on a tour of the new facilities. The new office will house the director of the office, four lawyers, an investigator, two secretaries and a law clerk.

Public Advocate Ernie Lewis said, "I am so proud of this move into a wonderful new facility on the Murray State campus. Murray State University has been a terrific host, and a pioneer in collaborating with a public defender office. I am grateful to President Alexander, the Criminal Justice Department, the Murray State students who have and are serving as interns, Tom Glover, and the staff of the Murray Office who are making the experiment work." ■



(L to R) Public Advocate Ernie Lewis, Melissa Cates, Robin Irwin, Shane Beaubien, Jason Gilbert, Directing Attorney Scott West, Matt Jaimet, Linda Orr, and Tom Glover, Western Regional Manager.

Legislative Update

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